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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,521	11/28/2005	Hans Rolf Pufal	4442.76045	9462
24978 7590 11/13/2008 GREER, BURNS & CRAIN 300 S WACKER DR 25TH FLOOR CHICAGO, IL 60606				
EXAMINER				
MATTHEWS, TERRELL HOWARD				
ART UNIT		PAPER NUMBER		
3653				
MAIL DATE		DELIVERY MODE		
11/13/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/536,521

Applicant(s)

PUFAL ET AL.

Examiner

Terrell H. Matthews

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 5/25/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

FINAL REJECTION

Applicant's arguments with respect to claims 7-17 have been considered but are moot in view of the new ground(s) of rejection.

The prior art rejections are maintained or modified as follows:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroder (US-4563271) in view of Timmermann (US-5740920).

Referring to claims 7-17, Schroder discloses a "Percussion Jig". See Figs. 1-12 and respective portions of the specification. Schroder (Fig. 12) teaches a sieve jigger for sorting solid material mixtures in a separating liquid bath according to density, comprising: a rocker (53) arranged to pivot in the liquid bath and to carry the solid material mixtures; a hydraulic cylinder (55) pivotally connected to the rocker to lift the rocker upwardly and to brake a downward movement of the rocker a displacement measuring device (66) operatively connected to a piston of the hydraulic cylinder; a hydraulic oil supply and evacuation conduit (loop from 64 to 55) connected to a working chamber of the hydraulic cylinder; a proportional control valve (641 wherein it is inherent

from precise timing/ frequency controlled operations of valve that valve includes a controllable electronic timing generator system) located in the hydraulic oil supply and evacuation conduit; a governor (65); the displacement measuring device being operatively connected via the governor to the proportional control valve in order to control the upward movement and the downward movement of the rocker, including controlling at least one of a lifting displacement and a lifting frequency (col. 4, 5).

Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above is certainly capable of having the proportional control valve is arranged such that hydraulic oil is fed through the hydraulic oil supply and evacuation conduit and the proportional control valve into the working chamber of the lifting and braking cylinder until before an upper dead point of the hydraulic cylinder is reached and, to lower the rocker, hydraulic oil is displaced from the working chamber of the hydraulic cylinder and is discharged through the hydraulic oil supply and evacuation conduit and proportional control valve in a free fall mode followed by a hydraulic braking of the cylinder piston before a lower dead point of the hydraulic cylinder is reached; having the lifting and braking cylinder and the proportional control valve arranged to have a working cycle comprising a lifting phase of the rocker, a free-fall phase of the rocker and a braking phase of the rocker, wherein all three phases can be controlled independently; and having a difference between an upper and lower piston position of the lifting and braking cylinder corresponds to a lifting

displacement of the rocker, wherein a lifting displacement range lies between an upper dead point limit and a lower dead point limit of the cylinder piston. This is especially applicable in the instant application as the applied prior art expressly teaches a computer controller and inputs for varying the function of the hydraulic cylinder (col. 4,5). Schroder does not disclose wherein the hydraulic cylinder has a single working pressure chamber. Timmermann discloses a "Jigging Screen Device". See Figs. 1-5 and respective portions of the specification. Timmermann further discloses a single working pressure chamber (22) with a hydraulic cylinder (21) (See at least Fig. 3). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Schroder so that only one pressure chamber was included, so that apparatus was easier to construct with less hydraulic lines and chambers, while still allowing material to be separated in an efficient manner.

Response to Arguments

Applicant's arguments that the prior art fails to teach the claimed features are unpersuasive as a result of Schroder in view of Timmermann. In particular, applicants focus on "a hydraulic cylinder with a single working pressure chamber", is disclosed and taught by Timmermann. Consequently, as a review of the prior art undermines applicant's arguments, the claims stand rejected. Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicants' amendment necessitated any new grounds of rejection

present in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrell H. Matthews whose telephone number is (571)272-5929. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick H. Mackey/
Supervisory Patent Examiner, Art
Unit 3653

THM